

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



QENDRIM BAJRAMI

Claimant-Respondent Cross-Petitioner

V.

BL HARBERT INTERNATIONAL, LLC

and

ALLIED WORLD NATIONAL
ASSURANCE COMPANY

Employer/Carrier-
Petitioners
Cross-Respondents

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Respondent

ASTRIT BAJRAMI

Claimant-Respondent Cross-Petitioner

V.

BL HARBERT INTERNATIONAL, LLC

and

ALLIED WORLD NATIONAL)	
ASSURANCE COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
Cross-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on MOTION
)	to DISMISS
Respondent		

Claimants and employer appeal the Order on Motion for Reconsideration (2018-LDA-00680 and 2018-LDA-00467), dated May 22, 2019 (“Reconsideration Order” or “Recon. Order”) of Administrative Law Judge Lystra A. Harris rendered on claims filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the DBA). The Director, Office of Workers’ Compensation Programs (the Director), has filed a motion to dismiss the appeals as interlocutory. 20 C.F.R. §802.401(b). Claimants and employer respond, separately, urging the Board to deny the Director’s motion.

Claimants worked at a United States Embassy construction project in Kosovo and claim to have suffered work-related injuries. The day the administrative law judge informed the parties their cases would be consolidated for adjudication, claimants filed motions asking her to find their injuries are covered under the DBA and any DBA waiver was invalid.¹ Employer responded and moved to dismiss the claims, submitting evidence in support of the waiver’s applicability. Claimants replied.

¹ The website of the Office of Workers’ Compensation Programs, which contains a list of active waivers, states:

The Secretary of Labor may waive application of the Defense Base Act with respect to any contract, work location, or class of employees upon the written request of the head of any department or other agency of the United States. It is Department of Labor policy that waivers do not apply to citizens or legal residents of the U.S. or to employees hired in the U.S. In addition, once granted, the waiver is only valid if alternative workers’ compensation benefits are provided to the waived employees pursuant to applicable local law. If there are no local workers’ compensation laws, the waiver has no

The administrative law judge found that employer did not establish the existence and applicability of a waiver. Order Addressing DBA Coverage at 5 (Dec. 19, 2018) (DBA Order). She found that Kosovo is not among the countries listed as having an active DBA waiver and also that the evidence does not establish a local workers' compensation scheme covering claimants. *Id.* at 5-7. The administrative law judge thus found the claims covered under the DBA. Because other matters needed resolution, she did not cancel the hearing scheduled for January 31, 2019. *Id.* at 8 n.11.

The Director moved for reconsideration of the DBA Order, averring the DBA waiver for Kosovo expired before the claimants' injuries occurred, and the administrative law judge need not have addressed the general validity of the waiver or the application of any Kosovo workers' compensation plan. In granting the Director's motion, the administrative law judge took official notice of the authenticity of the Department of State (DOS) Procurement Information Bulletin 2017-04, included among the Director's exhibits, and found that the 1987 DBA waiver, and a subsequent 1994 waiver, for Kosovo had expired as of January 31, 2017. Recon. Order at 7; Dir. M/Recon. at exh. E; *see also* Dir. M/Recon. at exh. C (OWCP email terminating waiver). She determined coverage under the DBA would, therefore, be dependent upon claimants' dates of injury. As the parties agreed Astrit's injury occurred on May 2, 2017, a hearing would be necessary to address the merits of his compensation claim. As they disputed whether and when Qendrim suffered a covered work-related injury, a hearing would be necessary to address those issues as well as the merits of his claim, if reached. Recon. Order at 7. Claimants and employer appeal the administrative law judge's order.

The Director asserts the parties' appeals should be dismissed because the administrative law judge's Reconsideration Order is non-final as it neither awards nor denies benefits and does not fall within any exception allowing for review of non-final orders. The Director contends there is no need for the Board to direct the course of the adjudication, and no party has yet been aggrieved. In response, employer asserts the criteria of the collateral order doctrine are met, and the issue is significant enough to warrant the Board's direction, as the outcome could affect other nationals who worked on DOS construction projects dating to 1987. Claimants respond that the collateral order doctrine criteria are met. They additionally assert the waiver was never valid; if valid,

effect and local and foreign nationals working under a U.S. contract are covered under the DBA.

<https://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm> (accessed Nov. 6, 2019). Kosovo is not on the active waiver list.

however, they argue the issue of coverage has been finally decided such that it is ripe for appeal.

Initially we note that the Director correctly states that neither claimants nor employer are adversely affected or aggrieved by the administrative law judge's finding that the DBA waivers expired on January 31, 2017. Neither claimant has yet been denied benefits under the Act due to the existence of the waiver, and employer has not been found liable for benefits due to the waiver's expiration. *See* 20 C.F.R. §802.201(a); *see generally Kicklighter v. Ceres Terminal, Inc.*, 13 BRBS 109, 123 (1981) (Board does not issue advisory opinions).

In addition, the administrative law judge's order finding the DBA waiver had expired and coverage is dependent on the dates of claimants' injuries is interlocutory in that it neither awards nor denies benefits. *See* 33 U.S.C. §919(c). The Board generally does not undertake interlocutory review of non-final orders. *See, e.g., Arjona v. Interport Maintenance*, 24 BRBS 222 (1991); *see also Newton v. P & O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The Board will undertake interlocutory review if the non-final order conclusively determines a disputed question, resolves an important issue which is completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) ("collateral order doctrine"); *Zaradnik v. The Dutra Group, Inc.*, 52 BRBS 23 (2018). If the order at issue fails to satisfy any one of these requirements, the Board nonetheless may, in its discretion, decide the appeal if necessary to direct the course of the adjudicatory process or a party alleges it has been denied due process of law. 33 U.S.C. §923(a) (Board is not bound by formal rules of procedure); *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989).

The administrative law judge's Reconsideration Order addresses DBA coverage, which is fully reviewable in an appeal of a final decision and order awarding or denying benefits. Therefore, the Reconsideration Order does not satisfy the collateral order doctrine. *See J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92, 96 n.13 (2009), *aff'd sub nom. Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9th Cir. 2012), *cert. denied*, 570 U.S. 904 (2013); *Arjona*, 24 BRBS 222. Further, although employer asserts the administrative law judge's order will have far-reaching effects and potentially result in "countless" DBA claims being filed, employer has not substantiated this assertion. Thus, it has not been shown that the Board needs to direct the course of the adjudication of these cases. *Newton*, 38 BRBS 23.

Accordingly, we grant the Director's motion to dismiss claimants' and employer's appeals of the administrative law judge's interlocutory order.²

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

² On September 12, 2019, the parties jointly filed a motion for an extension of time to file their initial briefs on the merits in these cases. As we have dismissed the appeals, we deny the joint motion as moot.